

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

File No.:OA-06-34

April 28, 2006

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Enforcement File No. OA-06-34
Regarding Alleged Unauthorized Placement of Structures on State
Leased Lands General Lease S-4900

BY: 50 % Estate of May Kealoha (deceased), c/o Sereen Assucion,
2357B Maunalaha Road, Honolulu, Hawaii 96822
50 % Dorothy Ortiz, 2357A Maunalaha Road, Honolulu, Hawaii
96822

LAND OWNERSHIP: State of Hawaii, Department of Land and Natural Resources, Land
Division, P.O. Box 621, Honolulu, Hawaii 96809

TMK: (1) 2-5-024:005

AREA OF PARCEL: 1.45 Acres - .20 Acres Stream = 1.25 Acres (54,452.5 Square Feet)

AREA OF USE: Approximately 2,500 Square Feet

LOCATION: Maunalaha Homesites, Island of Oahu

SUBZONE: Resource

DESCRIPTION OF AREA:

The subject parcel TMK: (1) 2-5-024:005 is located within the Maunalaha Homesites, in Tantalus, Island of Oahu, and owned by the State of Hawaii, Department of Land and Natural Resources (DLNR). This area is known as the Maunalaha Homesites area; there have been approximately 29 leases assigned. May Kealoha, the deceased, and Dorothy Ortiz, sisters, are the general lessees to subject parcel TMK: (1) 2-5-024:005, under General Lease S-4900. The subject parcel is located in the State Land Use (SLU) Conservation District, Resource subzone (**Exhibits 1, 2 & 3**).

ALLEGED UNAUTHORIZED LAND USES:

The Office of Conservation and Coastal Lands (OCCL) received a complaint from the Oahu District Land Office (ODLO) regarding an unauthorized structure on subject parcel TMK: (1) 2-5-024:005. On December 1, 2005, OCCL staff conducted a site inspection on the subject parcel and found three structures - Structure A, Structure B, and Structure C; all which seemed to be serving as three separate Single Family Residences (SFR)(**Exhibit 4**).

On December 2, 2005, the OCCL sent a letter to the ODLO regarding the unauthorized structures, and asked for further information from the land division if possible (**Exhibit 5**).

On February 21, 2006, the ODLO sent a letter to Dorothy Ortiz, and the Estate of May Kealoha, asking for further information on the age, square footage, purpose, and permits for any of the structures (**Exhibit 6**).

On March 17, 2006, OCCL and ODLO staff met with Dorothy Ortiz, her husband John, and son Malcolm Ortiz. It was revealed the original structure on the parcel was identified as "Structure B." The Ortiz's live in "Structure A," which was constructed three years ago when they moved back onto the property. "Structure C" appears to be the newest structure; the Ortiz believed it was added after May Kealoha became deceased (approximately six years ago).

The two alleged, unauthorized land uses are the construction of SFR, Structure A and Structure C, and is the subject of the staff report.

REFERRAL OF ALLEGED VIOLATIONS TO THE LAND BOARD RATHER THAN THE HEARING OFFICER/ADMINISTRATIVE PENALTY SYSTEM (HOAPS):

The alleged violations have been referred to the Board of Land and Natural Resources rather than HOAPS because of the seriousness of the violations¹.

RESOLUTION OF UNAUTHORIZED LAND USES:

Chapter 13-5, Hawaii Administrative Rules (HAR) and Chapter 183C, Hawaii Revised Statutes (HRS), regulate land uses in the Conservation District by identifying a list of uses that may be allowed by Conservation District Use Permit (CDUP). The chapters also provide for penalties, collection of administrative costs, costs associated with land and/or habitat restoration, and damages to state land for uses that are not allowed or for which no permit has been obtained. HAR, Chapter 13-5 defines "land use" in part as: the placement or erection of any solid material on land or the grading, removing or dredging of any material or natural resource on land.

The two alleged, unauthorized land uses are the construction of SFR, Structure A and Structure C. This report and staff recommend conditions seek to resolve the subject Conservation District

¹ HOAPS distinguishes between Level I and Level II violations, the former being the more serious category which is referred to the Board, and the latter, minor violations, referred to HOAPS.

violation. Pursuant to HRS, Chapter 183C, the maximum fine for a conservation district violation is \$2,000 per violation in addition to administrative costs, costs associated with the land and/or habitat restoration, if required, and damages to state land. After written or verbal notification from the Department, willful violation of this section may incur an additional fine of up to \$2,000 per day per violation for each day the violation persists.

DISCUSSION:

Staff notes the two SFR's, Structure A and Structure C, have not applied for, executed, and/or received Conservation District Use Application (CDUA) approval. Staff notes the SFR Structure B did not received approval to make alterations and/or improvements.

Structure A

Staff notes Dorothy and John Ortiz live in "Structure A," which is approximately 750 square feet. The Ortiz's moved back to the subject parcel three years ago, and according to them spent approximately \$15,000.00 on the construction of the structure. Staff does not find any permits on file through the City and County of Honolulu (City) Department of Planning and Permitting Department (DPP) for a Building Permit.

Structure B

Staff notes the deceased was to have resided in "Structure B," and it appears that some of her family member live there now. Staff notes records obtained through the City's Department of Planning and Permitting office notes the structure may have been constructed in 1944. However, there is a record from 1983 in which a 144 square foot concrete deck was added to a 516 square foot structure, total square footage 660 square feet; although staff notes the structure appears to be larger than 660 square feet, perhaps 1,000 square feet. The structure appears to be in serious disrepair, and staff is concerned that the structure does not conform to the City's DPP Building Code Ordinances. Staff notes Structure B would no longer be considered a nonconforming structure since it has been altered.

Structure C

Staff notes other family members of the deceased live in Structure "C," which is approximately 750 square feet. Apparently, this structure was constructed six years ago after May Kealoha passed away. Staff does not find any permits on file through the City DPP for a Building Permit.

Staff notes there are three separate SFR structures located on the subject parcel. Staff notes the two SFR Structures, A and Structure C, are considered a violation of the Conservation District Rules and Regulations, Chapter 183C, Hawaii Revised Statutes, and Chapter 13-5, Hawaii Administrative Rules (HAR). Staff notes pursuant to HAR, Section 13-5-41(b), SINGLE FAMILY RESIDENCES: STANDARDS notes that not more than one SFR shall be authorized within the Conservation District on a legal lot of record. Staff notes the lot size is 1.25 acres (54,452.5 square feet) and the Maximum Developable Area² that could be developed is 5,000 square feet.

² The OCCL notes the Maximum Developable Area (MDA) "means the total floor area in square feet allowed under the approved land use. The floor area computation shall include: all enclosed (on three sides minimum, with floor or roof structure above) living areas; above-grade decks in excess of four feet in width; garage; carport; swimming pools, saunas or other developable water features (excluding naturally existing ponds, tidepools, etc.); play courts; or any other

Staff notes in order to resolve the enforcement case, there can only be one SFR structure on the subject parcel. Staff recommends to the Board of Land and Natural Resources (Board) that Dorothy Ortiz and Estate of May Kealoha are given one year from the date of the Board's action to remove two of the SFR structures to conform to the Chapter 183C, HRS, and Chapter 13-5, HAR.

Staff notes the year will give Dorothy Ortiz and the Estate of May Kealoha time to remove two of the SFR structures, and to apply, submit, and execute an After-The-Fact (ATF) CDUA for the remaining SFR. Dorothy Ortiz and the Estate of May Kealoha will need to determine which SFR structure will remain. The ATF CDUA could also address Dorothy Ortiz and the Estate of May Kealoha request to alter, and/or increase the square footage of the remaining SFR to meet the total 5,000 square foot MDA allowed.

The City's Real Property Office notes there are three structures, which total approximately 63,162 square feet. Staff notes the improved structure figures of 10,000, 42,984, and 10,178 square feet seem quite high. It is possible the numerical value is wrong (**Exhibit 7**).

Staff further recommends to the Board that a fine of \$2,000.00 be levied on Dorothy Ortiz for Structure A that was constructed three years ago. Staff recommends to the Board that a fine of \$2,000.00 be levied on the Estate of May Kealoha for Structure C that was constructed six years ago. Staff notes Dorothy Ortiz and the Estate of May Kealoha should each pay \$250.00, total \$500.00 for the OCCL's administrative costs; total costs \$4,500.00. This submittal and notice of the Board's meeting will be sent to Dorothy Ortiz and the Estate of May Kealoha by certified mail to the address of record in Hawaii.

FINDINGS:

1. That Dorothy Ortiz and the Estate of May Kealoha did in fact authorize, cause, or allow two unauthorized violations to occur (construction of two structures);
2. That the two unauthorized land uses are of a serious nature; and
3. That the two unauthorized land uses occurred within the State Land Use Conservation District, General subzone.

AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to Chapter 183C, Hawaii Revised Statutes (HRS), the Board of Land and Natural Resources find Dorothy Ortiz and the Estate of May Kealoha in violation of HRS, Chapter 183C and HAR, Chapter 13-5, and is subject to the following:

standing structures, which are accessory to the approved land use." For lots more than one acre the maximum MDA is 5,000 square feet.

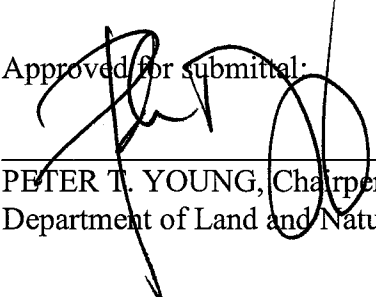
1. That Dorothy Ortiz and the Estate of May Kealoha violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in two instance by failing to obtain the appropriate approval for Structure A and Structure B. Dorothy Ortiz and the Estate of May Kealoha are fined \$2,000.00 each;
2. That Dorothy Ortiz and the Estate of May Kealoha are fined an additional \$500.00 for administrative costs associated with the subject violation;
3. That Dorothy Ortiz shall pay all \$2,225.00, and the Estate of May Kealoha shall pay \$2,225.00 (total **\$4,500.00**) within thirty (30) days of the date of the Board's action;
4. That Dorothy Ortiz and the Estate of May Kealoha remove two of the three SFR structures, and apply, submit, and execute an After-The-Fact (ATF) CDUA for the remaining SFR to bring it into conformance with Chapter 183C, HRS, and Chapter 13-5, HAR, within one year from the date of the Board's action;
5. That in the event of failure of Dorothy Ortiz and the Estate of May Kealoha to comply with any order herein, they shall be fined an additional \$2,000.00 per day until the order is complied with;
6. That no further work shall occur on the subject parcel identified TMK: (1) 2-5-024: 005 located within the Conservation District, without the Board of Land and Natural Resources approval; Chairman's approval and/or OCCL approval. If further work occurs in the Conservation District portions of the subject parcels without approval; the Dorothy Ortiz and the Estate of May Kealoha will be fined an additional \$2,000.00 a day; and
7. That in the event of failure of Dorothy Ortiz and the Estate of May Kealoha to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,



Dawn T. Hegger, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

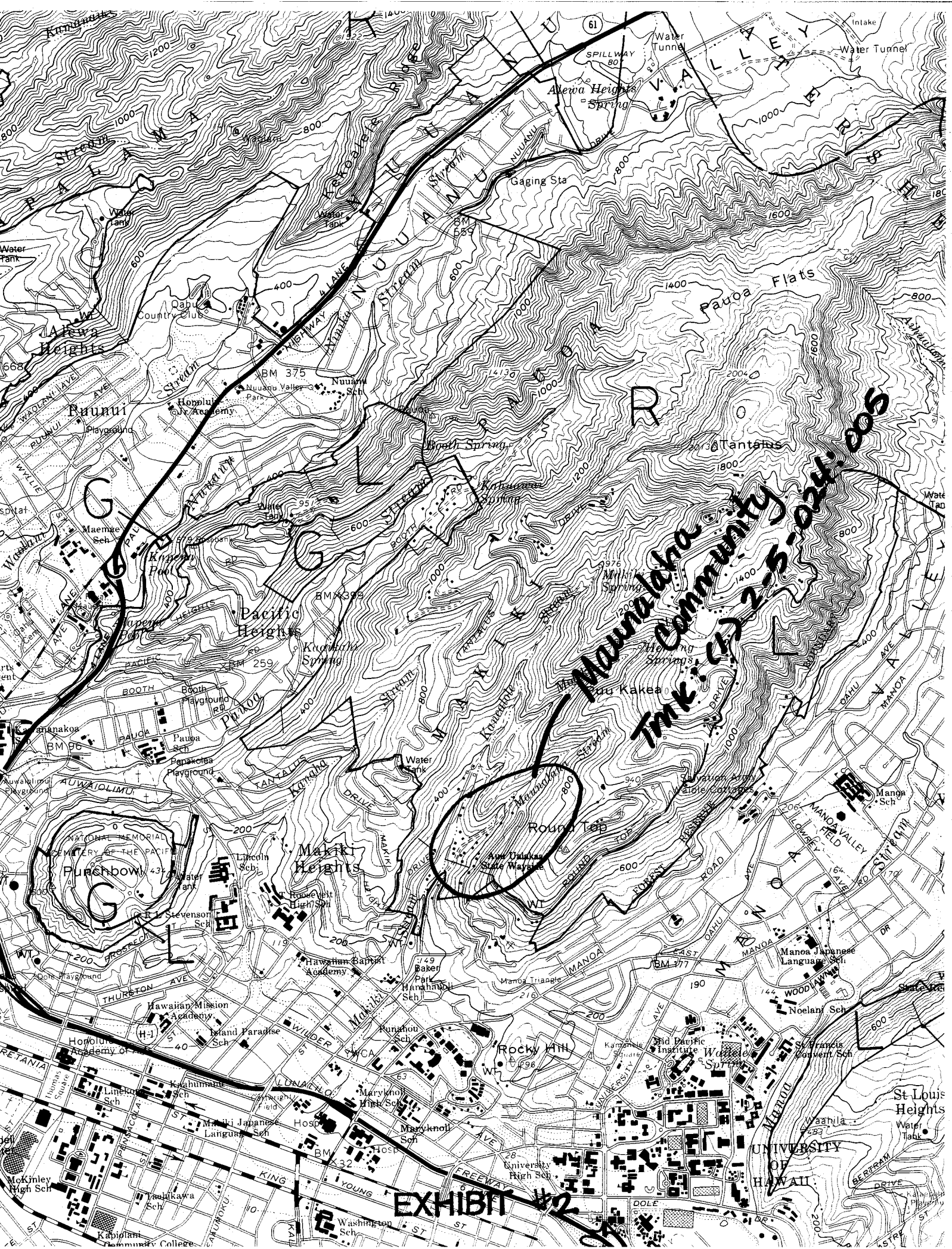


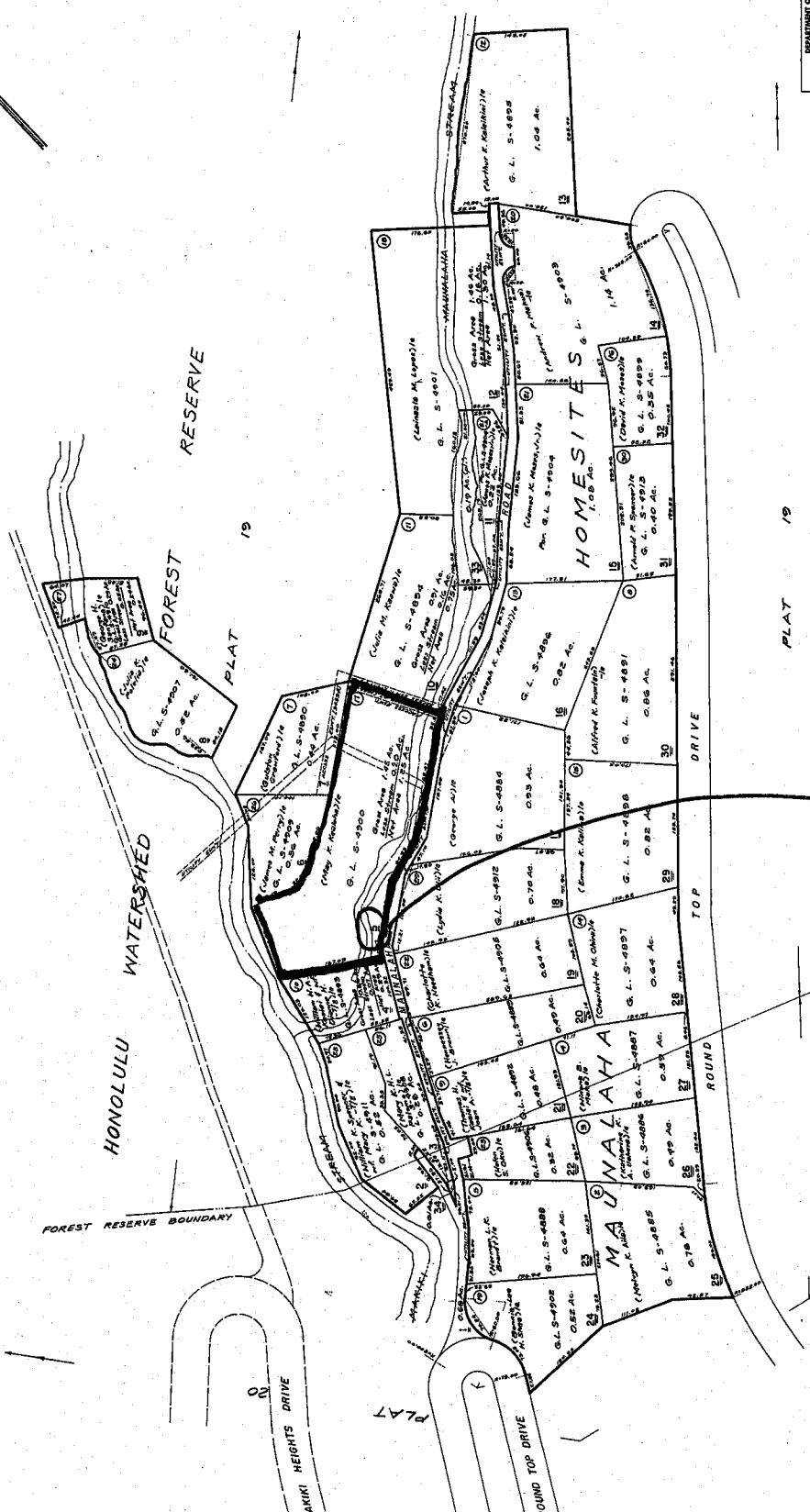
PETER T. YOUNG, Chairperson
Department of Land and Natural Resources

[illegible]

Approximate area Maunaloa Community
Time: (1) 2-5-024: 005

EXHIBIT 1





DEPARTMENT OF LAND & NATURAL RESOURCES			
PROPERTY ASSESSMENT DIVISION			
TAX MAP SECTION			
TAX MAP			
CITY & COUNTY OF HONOLULU			
ZONE	SEC.	PLAT	
2	5	24	

NOTE: All lots owned by the State of Hawaii, unless otherwise noted.

FOR PROPERTY ASSESSMENT PURPOSES
SUBJECT TO CHANGE

MAKIKI & TANTALUS, OAHU, HAWAII, "MAUNALOA HOMESITES" (Pgs. 2-5-19 & 20)

Trmk: (1) 2-5-024:005
Dorothy Ortiz
Estate May Paloma

EXHIBIT 3

Site Inspection December 1, 2005
Tax Map Key: (1) 2-5-024:005



- > Dorothy, John, Malcolm
Ortiz
- > constructed app. 2003

STRUCTURE A



- > original structure
Kealoha Family

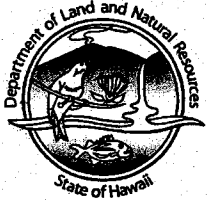
STRUCTURE B



- > constructed app. 2000
- > Kealoha Family

STRUCTURE C

LINDA LINGLE
GOVERNOR OF HAWAII



PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Enforcement Case OA-06-34

MEMORANDUM

DEC - 2 2005

TO: Russell Tsuji, Administrator
Land Division

FROM: Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

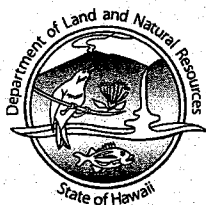
SUBJECT: Site Inspection for Subject Parcel TMK: (1) 2-5-024: 005
May K. Kealoha, General Lease S-4900

The Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Lands was notified of a possible violations regarding the unauthorized construction of several structures on Subject Parcel TMK: (1) 2-5-024: 005.

This is to let the Oahu Land District Office know that on December 1, 2005, Dawn Hegger of the OCCL staff conducted a site inspection and noted three structures located on the subject parcel. The OCCL is not sure of the age of the structures and requests further information about the structures from the Land Division and/or the Lessee if possible.

Please contact Dawn Hegger of our Office of Conservation and Coastal Lands staff at 587-0380.

LINDA LINGLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

February 21, 2006

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

GL4900

Dorothy Ortiz
2357A Maunalaha Road
Honolulu, Hawaii 96822

May Kealoha
C/o Sereen Assucio
2357B Maunalaha Road
Honolulu, Hawaii 96822

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

2006 FEB 23 P 3:26

RECEIVED
OFFICE OF CONSERVATION
AND COASTAL LANDS

Dear Lessees:

Subject: Possible Violations for Unauthorized Structures on the site of General Lease No. S-4900, May Kealoha (deceased) and Dorothy Ortiz, as Tenants in Common, Maunalaha Homesites, Makiki & Tantalus, Honolulu, Oahu, Tax Map Key: 2-5-24:05

The Office of Conservation and Coastal Lands (OCCL) has informed the Land Division of possible violations on the subject lease site. The OCCL is requesting information regarding the structures. Please provide Land Division answers to the following questions about the three structures identified as being on the subject lease site (see photo attachment):

- 1) Structures constructed before 1964 that have not been expanded, and/or remodeled;
- 2) Structures constructed before 1964 but that have been expanded, and/or remodeled;
- 3) All structures constructed after 1964;
- 4) Summarize the square footage of each structure(s) area;
- 5) The purpose of each structure - family dwelling; and
- 6) Government authorization document, i.e. City and County building permit.

Please provide a written response to the above questions by March 24, 2006.

EXHIBIT 6

Should you have any questions regarding this matter, you may call me at 587-0424.

Very truly yours,

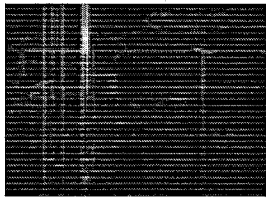


Al Jodar
Land Agent

cc: Oahu Land Board Member
Central Files
District Files
Joslyn Kaawa
✓ OCCL w/out attachment

I:\NETDATA\OAHU\AL\BD\Maunalaha\Ortiz&Kealoha structures ltr 06.doc





City & County of Honolulu Department of Planning and Permitting (

Tax Map Key

DEPARTMENT

DPP Home
Honolulu Home

ACCOUNT

Sign In

PERMITTING

Building Permits
Properties
New Online Permit
Building Permit Application
Subdivisions
Trenching Permits
Calculate BP Fees

Details | Warnings | Permits | Owners | History | Assessments | Str Setbacks | Parcel I

TMK: 2-5-024:005
Historical TMK Sequence:
Area (sq ft): 63162.
Area (acres): 1.45
Lot Number: 0017
Ohana:

LAND CONTROL CODES

Code Type	Code Description
FLOOD ZONE	FIRM ZONE X
HEIGHT LIMIT	STATE LAND USE STANDARDS
HISTORIC SITE REGISTER	NO
LOT RESTRICTIONS	NONE
SMA/SHORELINE	NOT IN SMA
SPECIAL DISTRICT	NOT IN SPECIAL DISTRICT
STATE LAND USE	CONSERVATION DISTRICT
STREET SETBACK	NONE
ZONING (LUO)	P-1 RESTRICTED PRESERVATION

FACILITIES

Facility Code	Year Built	No. of
01 - Detached Dwelling (detached from property line on all sides)	1944.	1.

TMK SEPARATIONS

Activity Code	Census Tract	Census Block
1 - HOUSEHOLD DWELLING	032.00	106

Address List:

2357 - MAUNALAHA RD

Cancel

Submit

year one structure
constructed

City and County of Honolulu
Department of Permitting & Planning
650 So. King St, Honolulu, HI 96813



HEI

[Home](#) [Property Search](#)

RECORD DETAILS

[Address](#) [Parcel ID](#) [Advanced](#)[Parcel Data](#)[Permits](#)[Land Details](#)[Assessed Values](#)[Sales History](#)[Residential](#)[Commercial](#)[Other Improvements](#)[Sketch](#)[Tax Bill](#)[Tax Details 2005](#)[Tax Details 2004](#)[Tax Details 2003](#)[Tax Details 2002](#)[Tax Details 2001](#)[Parcel Map](#)

250240050000

n/a

n/a

Land

	Property Class	Square Feet	Acreage	Agricultural Indicator
*	IMPROVED RESIDENTIAL	10000	.2296	
	IMPROVED RESIDENTIAL	42984	.9868	
	IMPROVED RESIDENTIAL	10178	.2337	

Data Last Updated : 3/26/2006

Disclaimer

The City and County of Honolulu Real Property Assessment & Treasury Divisions make every possible effort to produce and publish the most current and accurate information. No warranties, expressed or implied, are provided for the data herein, its use, or its interpretation. Utilization of the search facility indicates understanding and acceptance of this statement by the user.

Data Copyright Honolulu County Public Access [Disclaimer] Last Updated: 3/26/2006
Site Design Copyright 1999-2004 Akanda Group LLC. All rights reserved.

EXHIBIT 7



HEI


[Home](#) [Property Search](#)

RECORD DETAILS

[Address](#) [Parcel ID](#) [Advanced](#)
▼ [Parcel Data](#)[Permits](#)[Land Details](#)[Assessed Values](#)[Sales History](#)[Residential](#)[Commercial](#)[Other Improvements](#)[Sketch](#)[Tax Bill](#)[Tax Details 2005](#)[Tax Details 2004](#)[Tax Details 2003](#)[Tax Details 2002](#)[Tax Details 2001](#)[Parcel Map](#)

250240050000

n/a

n/a

Parcel Data

TMK 250240050000
Site Address 2357 MAUNALAH RD
Apartment No.
Property Class Please select the Land Details tab.
Neighborhood Code 2535-1
Neighborhood Name
Total Parcel Area 1.4501 Acres
Zoning C/61/60

Ownership

Owner	Address	City	State	Country	Zip Code	Owner Type
ORTIZ,DOROTHY K	2357 MAUNALAH RD	HONOLULU	HI		96822	Lessee
KEALOHA,MAY W						Lessee
DEC'D						

Data Last Updated : 3/26/2006**Disclaimer**

The City and County of Honolulu Real Property Assessment & Treasury Divisions make every possible effort to produce and publish the most current and accurate information. No warranties, expressed or implied, are provided for the data herein, its use, or its interpretation. Utilization of the search facility indicates understanding and acceptance of this statement by the user.

Data Copyright Honolulu County Public Access [Disclaimer] Last Updated: 3/26/2006
 Site Design Copyright 1999-2004 Akanda Group LLC. All rights reserved.

EXHIBIT 1

POWERED BY AKANDA

HEI



Home Property Search

Address Parcel ID Advanced

RECORD DETAILS

Parcel Data

Permits

Land Details

Assessed Values

Sales History

► Residential

Commercial

Other Improvements

Sketch

Tax Bill

Tax Details 2005

Tax Details 2004

Tax Details 2003

Tax Details 2002

Tax Details 2001

Parcel Map

250240050000

n/a

n/a

Residential

1 of 1

Property Class

Card

1

Occupancy

SINGLE-FAMILY

Story Height

1

Year Built

1983

Eff. Year Built

First Floor Living Area

516

Total Living Area

516

Full Baths

1

Half Baths

Bedrooms

Additions

Lower Floor

1st Floor

2nd Floor

3rd Floor

Area

CONCRETE DECK

144 sf

Data Last Updated : 3/26/2006

Disclaimer

The City and County of Honolulu Real Property Assessment & Treasury Divisions make every possible effort to produce and publish the most current and accurate information. No warranties, expressed or implied, are provided for the data herein, its use, or its interpretation. Utilization of the search facility indicates understanding and acceptance of this statement by the user.

Data Copyright Honolulu County Public Access [Disclaimer] Last Updated: 3/26/2006
Site Design Copyright 1999-2004 Akanda Group LLC. All rights reserved.

EXHIBIT 7



HEI



[Home](#) [Property Search](#)

[Address](#) [Parcel ID](#) [Advanced](#)

RECORD DETAILS

- Parcel Data
- Permits
- Land Details
- Assessed Values
- Sales History
- Residential
- Commercial
- Other Improvements
- ▶ Sketch
- Tax Bill
- Tax Details 2005
- Tax Details 2004
- Tax Details 2003
- Tax Details 2002
- Tax Details 2001
- Parcel Map

250240050000

n/a

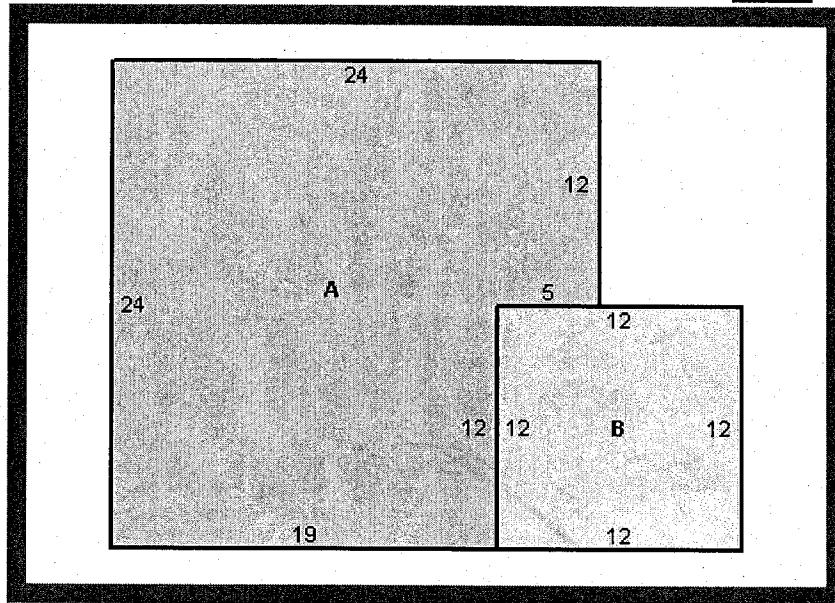
n/a

CURRENT

1 of 1

1 of 1

[Return To Search](#)



Legend

Options

A

MAIN, 516 sf,

B

CONCRETE DECK, 144 sf,

[Print This](#)

[Email This](#)

516
144

660

Data Last Updated : 3/26/2006

Disclaimer

The City and County of Honolulu Real Property Assessment & Treasury Divisions make every possible effort to produce and publish the most current and accurate information. No warranties, expressed or implied, are provided for the data herein, its use, or its interpretation. Utilization of the search facility indicates understanding and acceptance of this statement by the user.

Data Copyright Honolulu County Public Access [Disclaimer] Last Updated: 3/26/2006
Site Design Copyright 1999-2004 Akanda Group LLC. All rights reserved.

EXHIBIT 7